

Application No. 09/518,452

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REMARKS

Claims 1-11 and 13-50 are pending in the present application. Pursuant to the present Office Action:

- (i) claims 5, 11, 16, 18, 23, 28, 37, 39 and 47 are objected to for certain specified informalities;
- (ii) claims 1-4 and 16-50 are allowed;
- (iii) claims 5, 7 and 8 stand rejected under 35 U.S.C. § 102(b);
- (iv) claims 6, 9-11, 13 and 14 stand rejected under 35 U.S.C. § 103(a); and
- (v) claim 15 is objected to as being dependent upon a rejected base claim.

Applicants have hereby:

- (i) amended claims 16, 18, 23, 28, 30, 37, 39 and 47 to address the objections specified in Paragraph 8 of the Office Action. With regard to the objections to claim 16, which requests that "or" be changed to "and", and "one of" be deleted, Applicant has made a slightly different change than that suggested by the Examiner. Applicant has chosen this particular change based on the recent decision of the United States Court of Appeals for the Federal Circuit in the matter of Superguide Corporation v. DIRECTV Enterprises, Inc. et al., February 12, 2004. *Superguide v. DIRECTV Enterprises*, 358 F.3d 870 (Fed. Cir. 2004). According to the *Superguide* opinion, the claim language must be afforded its plain and ordinary meaning, and construing a limitation that uses the preposition "at least one of" to modify a listing of items depends on whether that listing is presented in the conjunctive ("and") or disjunctive ("or"). *Id.* at 885. When the preposition precedes a conjunctive listing, the limitation is construed as requiring that "at least one of" be applied to each item in the list. *Id.* at 886. The *Superguide* case dealt with claim language that used the preposition "at least one of" before a conjunctive list, and the Court specifically stated:

The phrase "**at least one of**" precedes a series of categories of criteria, and the patentee used the term "and" to separate the categories of criteria, which connotes a conjunctive list. A common treatise on grammar teaches that "an article or a preposition applying to all the members of the series must either be used only before the first term or else be repeated before each term." William Strunk, Jr. & E. B. White, *The Elements of Style* 27 (4th ed. 2000). Thus, "in spring, summer, or winter" means "in spring, in summer, or in winter."

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Id. Applying this grammatical principle here, the phrase "at least one of" modifies each member of the list, i.e., each category in the list. Therefore, the district court correctly interpreted this phrase as requiring that the user select at least one value for each category

Id.

In the present situation, the Applicant does not intend the objected to limitation to be in the conjunctive form, and thus be interpreted as having the preposition "at least one of" apply to each category -- i.e., the limitation is not intended as meaning at least one of data, at least one of audio, and at least one of video -- which would be the interpretation resulting from the Examiner's suggested Amendment. Instead, the Applicants amendment to claim 16 above changes the claim to read such that the "terminal traffic" comprises one or more of the traffic types of "data, audio or video".

A similar analysis applies to the objection to claim 23. In response to which Applicant has amended the claim to read such that "the queue" is designated as one of the listed queue types, "a high priority rate request queue, a low priority rate request queue, a high priority volume request queue, or a low priority volume request queue".

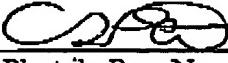
- (ii) canceled the rejected claims 5-11, 13 and 14; and
- (iii) amended claim 15 to be in independent form including all of the limitations of its respective base claim and all intervening claims.

In view of the foregoing, Applicants believe that the application is in condition for allowance and notice to this effect is respectfully requested.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action on any of the claims now pending in the application, it is requested that the Examiner telephone Craig Plastrik, at 301-601-7252, so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully Submitted,

14 July 2004


Craig Plastrik Reg. No. 41,254

THE DIRECTV GROUP, INC.
(formerly Hughes Electronics Corporation)
Customer No. 20991